IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6453 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NARANBHAIBHURABHAI - Petitioner(s)

Versus

MANAGERSARVODAYASHRAM - Respondent(s)

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Appearance :

MR BJ TRIVEDI for Petitioner(s) : 1,MR JT TRIVEDI for Petitioner(s) : 1,MS JIGNASA B TRIVEDI for Petitioner(s) : 1,
MR AMAR D MITHANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/10/2005

ORAL JUDGMENT

1.In this petition, the petitioner, erstwhile employee of the respondent has challenged the legality of an Award dated 15.12.2001 passed by the Labour Court, Junagadh. By the impugned Award, Labour Court was pleased to

reject the reference of the petitioner. Petitioner had filed the reference challenging his termination dated 12.05.1988. Before the Labour Court, the stand of the respondent was that the services of the petitioner was never terminated and the workman himself stopped attending the duties w.e.f 13.05.1988 since there was a criminal case filed against him and in fact, he was declared as an absconder. Labour Court held that the petitioner had worked for more than 240 days during the relevant period of 12 calendar months before his termination. The Labour Court held that the respondent failed to prove that the petitioner had abandoned his service.

2. The Labour Court observed that the petitioner has failed to prove that he was terminated. Even otherwise, it was found that the reference was raised belatedly and the petitioner was also gainfully engaged. Considering all these aspects of the matter, Labour Court was pleased to reject the reference.

3. In my view, the Labour Court has committed an error in rejecting the reference altogether. It is by now well settled that when the employer set out whether abandonment of service, the duty is of the employer to establish such a fact. Reference in this regard can be made to the decision of Hon'ble Supreme Court in the case of **M/s. Nick (India) Tools Vs. Ram Sarat and Anr. reported in 2004 AIR SCW page 5095**. Additionally, by virtue of raising the reference belatedly, final relief could have been molded but it was not proper to reject

the reference altogether. However, considering the fact that the petitioner was facing serious charges that he had worked for only few years before his termination and that he is also gainfully employed, this is not a fit case where reinstatement should be ordered.

4. In the facts of the present case, I find it proper to direct the respondent to pay a sum of Rs. 25,000/- to the petitioner by way of compensation in lieu of reinstatement and backwages. This will be towards full claim of the petitioner against the respondents and the amount as provided shall be paid within a period of 2 months from the date of receipt of a copy of the Order. Rule made absolute to the above extent. No order as to costs.

(Akil Kureshi, J.)

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